

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MARITEL SOUTHERN PACIFIC, INC.)	FCC File No. 0002460693
Assignor)	
)	
WARREN C. HAVENS)	
Assignee)	
)	
Application for Consent to the Partitioning and Disaggregation of VHF Public Coast Station License WPOJ536)	
)	
Request for Waiver of Section 80.773 of the Rules Regarding Signal Strength)	
)	

ORDER

Adopted: January 26, 2007

Released: January 29, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On February 14, 2006, MariTEL Southern Pacific, Inc. (MariTEL) filed an application to partition and disaggregate portions of its VHF Public Coast (VPC) geographic area license WPOJ536 to Warren C. Havens (Havens).¹ The application also requests a waiver of Section 80.773(c) of the Commission's Rules,² which specifies the non-interference obligations of adjacent VPC geographic area licensees.³ The waiver is sought so that the parties may implement an agreement authorizing operation at their common borders with higher signal strengths than Section 80.773(c) would otherwise permit.⁴ For the reasons that follow, we grant the waiver request to the extent indicated below, and will grant the application.

2. *Background.* MariTEL is the licensee of maritime VPC Service Area (VPCSA) 6, the Southern Pacific region, under call sign WPOJ536. Havens is the licensee of inland VPCSA 34, which is adjacent to VPCSA 6, under call sign WPOJ521. On June 14, 2004, MariTEL and Havens filed an application to partition and disaggregate portions of VPCSA 6 to Havens.⁵ In addition, on June 30 and July 29, 2004, respectively, Havens and MariTEL filed applications and waiver requests to modify their adjoining VPC geographic area licenses to authorize a mutually agreed upon signal strength in their

¹ See FCC File No. 0002460693.

² See *id.*, Exhibit A, "Description of Application and Request for Waiver" (*Waiver Request*).

³ 47 C.F.R. § 80.773(c). Section 80.773(c) provides that VPC geographic area licensees "are prohibited from exceeding a field strength of +5 dBu (decibels referenced to 1 microvolt per meter) at their service area boundaries, unless all the affected [VPC] geographic area licensees agree to the higher field strength."

⁴ See *Waiver Request* at 3.

⁵ See FCC File No. 0001775400.

common border area.⁶

3. On February 16, 2005, the former Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau,⁷ adopted and released an Order conditionally granting the application to partition and disaggregate portions of the WPOJ536 license, granting the parties' requested waiver of Section 80.773(c), and modifying their respective licenses as requested (*Order*).⁸ The *Order* provided the parties with the specific waiver relief they requested regarding signal strengths along the border between VPCSA 6 and 34.⁹ The parties would have been able to increase their signal strengths at the border without a waiver because Section 80.773(c) itself provides that the signal strength limits set forth in the rule may be exceeded with the agreement of all affected geographic area VPC licensees. The parties nonetheless desired and needed a waiver of the rule to implement that portion of their agreement that provided for the modification of their respective licenses to reflect the agreed-upon higher signal strengths, a measure intended to protect each party's right to continue to operate with the greater signal strength even if one of the other parties were to lose its authorization.¹⁰

4. In the instant application, MariTEL proposes to assign additional frequencies to Havens¹¹ through partitioning and disaggregation.¹² The applicants contend in the joint *Waiver Request* that the additional partitioning and disaggregation of license WPOJ536, and the associated additional waiver relief they seek, is intended to permit them to "more efficiently and fully" implement their intentions and commitments under their agreement, and would allow Havens to "fully utilize use the [acquired] spectrum in remote mountains of the California Sierra Mountain range while also protecting MariTEL's use of the spectrum to the West."¹³ MariTEL and Havens also state that this *Waiver Request* presents no new legal or factual issues beyond those that the former Public Safety and Critical Infrastructure Division considered in approving their first waiver request in the *Order*.¹⁴

5. *Discussion.* Section 1.925(b)(3) of the Commission's Rules provides that the

⁶ See FCC File Nos. 0001791005 (Havens), 0001823171 (MariTEL).

⁷ Pursuant to a Commission reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

⁸ See County of Placer, California, *Order*, 20 FCC Rcd 3657 (WTB PSCID 2005) (*Order*). The *Order* also granted an application filed by MariTEL and the County of Placer, California (Placer) to partition and disaggregate portions of the WPOJ536 license to Placer, and waived the Commission's Part 80 rules to permit Placer to use the assigned spectrum in a public safety communications system that would be regulated pursuant to the Part 90 rules. Placer is also a party to the agreement regarding signal strength along the border between VPCSA 6 and 34.

⁹ See *id.* at 3659 ¶ 5. The agreement among the parties permits, *inter alia*, Havens to operate in the partitioned area and elsewhere in VPCSA 34 on the channel pairs he received from MariTEL with a signal strength of 50 dBu at the boundary between the partitioned area and the remainder of VPCSA 6; and MariTEL to operate on the channel pairs Havens received from it with a field strength of 7 dBu at the boundaries between the partitioned area and the remainder of VPCSA 6. See also *Waiver Request* at 4.

¹⁰ See *Order*, 20 FCC Rcd at 3659 ¶ 5.

¹¹ See Exhibits B and C of the application, identifying the specific frequency pairs to be assigned to Havens in three delineated areas of VPCSA 6.

¹² Section 80.60 of the Commission's Rules, 47 C.F.R. § 80.60, permits the partitioning and disaggregation of VPC spectrum.

¹³ *Waiver Request* at 1.

¹⁴ *Id.* Given the absence of any novel legal or factual issues beyond those addressed in the *Order*, MariTEL and Havens request an expedited response to the *Waiver Request*. *Id.* Our action herein moots the request for expedited response.

Commission may grant a request for waiver “if it is shown that (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”¹⁵ We conclude that grant of the *Waiver Request* is warranted under the first prong of this standard, in that the underlying purpose of Section 80.773(c) would not be served by application to the instant case, and providing the requested relief would be in the public interest.

6. We agree with MariTEL and Havens that grant of the *Waiver Request* is warranted for the same reasons that supported the grant of the waiver of Section 80.773(c) in the *Order*.¹⁶ By including the agreed-upon signal strength limits as license conditions, we provide certainty to the parties and encourage investment in the authorized facilities; if the enhanced signal strength limits did not attach to the licenses, either of the parties might be required to reduce its signal strength to the maximum allowed under the rule in the event that the other party’s license was terminated or divested.¹⁷ We continue to believe that this limited waiver of Section 80.773(c) is warranted as a means to “provide protection to the licensees from any disruption of their operations that could result from actions of parties outside of their control.”¹⁸ Indeed, we find no basis to accord this protection to the licensees only with respect to some of the partitioned areas and disaggregated frequencies involved in these transactions, while withholding it with respect to others.

7. We also find no basis to conclude that grant of the subject application and *Waiver Request* would create potential harmful interference to maritime communications any more than would the grant of the earlier partitioning and disaggregation application, and the associated waivers, in the *Order*. MariTEL and Havens emphasize that they are not proposing to assign or disaggregate VHF maritime Channel 87B (161.975 MHz) in this transaction; thus, that channel remains available for maritime Automatic Identification Systems (AIS) and our decision here does not alter the channel’s current regulatory status.¹⁹ As was done in the *Order*, moreover, we expressly condition the grant of the instant waiver of Section 80.773(c) with a proviso that there be no interference to current or future marine communications, including but not limited to AIS operations.²⁰

¹⁵ 47 C.F.R. § 1.925(b)(3).

¹⁶ The application, including the *Waiver Request*, was placed on public notice on February 22, 2006, and no opposing pleadings were filed. See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control Licensee Applications, and *De Facto* Transfer Lease Applications Accepted for Filing, *Public Notice*, Report No. 2411 at 2 (WTB rel. Feb. 22, 2006).

¹⁷ See *Waiver Request* at 3.

¹⁸ See *Order*, 20 FCC Rcd at 3662 ¶ 14.

¹⁹ See *Waiver Request* at 2. Following the adoption of the *Order* and the filing of this application and *Waiver Request*, the Commission adopted a *Report and Order* in WT Docket No. 04-344 adopting its proposal to designate Channel 87B for exclusive AIS use in the maritime VPCAs, along with a *Further Notice of Proposed Rule Making*, in which it seeks comment on whether Channel 87B should be designated for exclusive AIS use in the inland VPCAs as well. See Amendment of the Commission’s Rules Regarding Maritime Automatic Identification Systems, *Report and Order and Further Notice of Proposed Rule Making and Fourth Memorandum Opinion and Order*, WT Docket No. 04-344, 21 FCC Rcd 8892 (2006).

²⁰ See *Order*, 20 FCC Rcd at 3662-63 ¶¶ 15-16. We note that providing for the higher signal strengths on the face of the parties’ licenses does not estop the Commission from revising the pertinent rules or modifying the subject licenses, consistent with its lawful authority. As noted in the *Order*, the continuing enforceability of the agreed-upon signal strength limits has application only to third-party licensees and applicants, not the Commission itself. See *id.* at 3662 ¶ 14.

8. *Conclusion.* We grant the application to assign the requested frequencies by partitioning and disaggregation from MariTEL to Havens as serving the public interest, convenience, and necessity.²¹ In addition, we grant MariTEL and Havens a waiver of Section 80.773(c) to permit the signal strength limits to which they have agreed (with Placer County as well as each other) in their common border area to be placed on their licenses as conditions to the licenses.²² This waiver grant is subject to the condition that no interference is caused to current or future marine communications, including but not limited to AIS operations.

9. For reasons set forth above, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver filed by MariTEL Southern Pacific, Inc. and Warren C. Havens in association with FCC File No. 0002460693 on February 14, 2006 IS GRANTED TO THE EXTENT STATED HEREIN SUBJECT TO THE CONDITION THAT no interference is caused to current or future marine communications, including but not limited to AIS operations.

10. IT IS FURTHER ORDERED that application FCC File No. 0002460693 SHALL BE PROCESSED consistent with this Order and the Commission's Rules, and the licenses at issue shall be modified accordingly.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

²¹ See 47 U.S.C. § 310(d).

²² The applicants also request that Havens be granted a single license consolidating the areas and frequencies which it has acquired both through approval of the earlier assignment application in the *Order* and through approval of the application herein, and that the earlier waiver grant be rescinded and replaced by grant of the instant *Waiver Request*. See *Waiver Request* at 4. We understand Havens to be concerned primarily that without such "consolidation," he will hold two licenses for two separate portions of the partitioned area, and thus possibly be required to comply with the 5 dBu limit in Section 80.773(c) at the border between those two areas. *Id.* at n.7. We clarify that Havens does not have to comply with the Section 80.773(c) signal strength limit at any such "internal border" that separates only areas that are licensed to Havens, through partitioning or otherwise. In such a case, Havens would be the only affected geographic area VPCSA licensee, and he could "agree with himself" to a higher field strength, provided that he continues to comply with the limit at all service area boundaries adjacent to any other VPCSA licensee (with whom Havens does not have a superseding agreement). Accordingly, we see no need to rescind the earlier waiver grant or to depart from our normal licensing procedures to address this particular concern.